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EXAMINER

RUHL, DENNIS WILLIAM

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12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/788,867	Applicant(s) SIMON ET AL.	
	Examiner Dennis Ruhl	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 72,74-89 and 93-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 72,74-89 and 93-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/10/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/10/08 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 72,74,75,77-79,81-87,89,93,95,96,98,99,100, are rejected under 35 U.S.C. 102(e) as being anticipated by Griner et al. (6917566).

For claims 72,81,89,98,100, Griner discloses an input processor 131 that processes received audio signals and outputs a processed signal. The input processor is fully capable of being connected to a “front house console” to receive an audio signal as claimed. Processor 131 is fully capable of this function because of the fact that it is designed to receive audio signals, see the figures. The input processor is disclosed as outputting a processed signal as claimed. See column 5, lines 41-43. The computing device is interpreted to be 132, which has a 1st hard drive 133. Processed audio signals

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are stored as claimed by computing device 132 and it is also disclosed as creating secondary event files (the claimed segment files). See column 6, line 48 to column 7, line 5. With respect to the recitation that the segment files includes a song, see column 9, lines 17-30 where this is disclosed. Also, the files themselves are not a structural part of the apparatus so this limitation really does not define anything more to the fact that there are segment files (secondary files of Griner). The fact that Griner discloses secondary event files satisfies the claimed limitation of segment files. The backup recorder is 410 and it is disclosed that the backup recorder can record the audio signals before they are processed by processor 131 or after they are processed by 131. See column 6, lines 33-35. When the backup recorder stores the processed signals from processor 131 (step 506), the backup recorder is coupled to the processor as claimed. The master recorder (cl 81) is any of the recording devices 310 in recording module 300 that each contain a high capacity hard drive, see column 5 line 58 to column 6, line 9. The master recorder is directly coupled to the input processor via the editing module. For claim 89, the language of "further configured to download... via the network" is directed to the ability to download data into the computer. Griner products formatted segment files. This ability is present in Griner as well as the ability to download files.

For claim 74, Griner discloses a mixer 120.

For claim 75, see column 5, lines 39-52 where the claimed limitation is disclosed. The input processor converts the audio signal by using an A/D converter as claimed.

For claims 77,99, the computing device is fully capable of receiving a break as claimed. All one has to do is interrupt the audio signal and a break has been produced.

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The computing device of Griner is fully capable of performing the functional language that is claimed. The computing device is also inherently configured to create segment files in response to a break. This is because one can start and stop the recording of the event in response to a break if one wanted to. Also see column 11, lines 25-44 where this limitation also appears to be satisfied by a technician using track delimiters, which are recognized by the system so that discrete tracks are recorded.

For claims 78,79, these claims are directed to non-functional descriptive material because reciting who the break is provided by, is not further reciting anything more structurally to the claimed system. These claims are apparatus claims and these claims are directed to the intended use of the apparatus and this language does not result in a structural difference from the prior art.

For claims 82-87, the claimed media receptacle(s) (duplicator(s)) is satisfied by Griner because the recorders 320 are disclosed as recording to CDs. This requires a media receptacle as claimed so that the CD can be burned. The claimed duplicator is claim 85 is also satisfied by Griner because the recorders duplicate (record) the audio files.

For claim 93, what is claimed is that the computing device is configured to operate a website. The term "operate" is broad and does not require any specific functionality be accorded to the computing device. The computing device of Griner satisfies what is claimed. The language of "the computing device is configured to operate a website" is language directed to the intended use of the server.

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With respect to claims 95,96, the language of "wherein the computing device is configured to automatically process payments" has been considered to the extent that this reads on a calculator function of a computer. The term "processing payments" is broad and can be a person using the computing device to add numbers together to arrive at a total for a sale. With respect to the term "automatically", this does not preclude human involvement and once a person hits the enter button to run a math calculation, the computing device automatically processes the math (i.e. processing the payment). With respect to the ability to provide information, this is present in Griner. The type of information being provided that is claimed is directed to non-functional descriptive material.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 76,80,88,94,97, are rejected under 35 U.S.C. 103(a) as being unpatentable over Griner (6917566).

For claim 76, Griner does not disclose that there is an equalizer in the input processor. Griner discloses that there is an equalizer in the editing module 200, as was stated and argued by applicant. The minor difference of locating the equalizer in the input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the equalizer of Griner from the editing module to the input processor. The is just reciting a new location for the equalizer where that equalizer still performs the same function as it did when located in the editing module 200. Simply rearranging the system and moving parts around with no showing of unexpected results is something that is considered to be obvious to one of ordinary skill in the art.

For claim 80, Griner discloses editing software that is in the editing module 200. Not disclosed is that the editing software is in the computing device. The minor difference of locating the editing software in the input processor versus the editing module of Griner is something that would have been obvious to one of ordinary skill in the art and involves nothing more than ordinary skill in the art. This is just moving the software of Griner from the editing module to the input processor. The is just reciting a new location for the editing software where that software still performs the same function as it did when located in the editing module 200. Simply rearranging the

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system and moving parts around with no showing of unexpected results is something that is considered to be obvious to one of ordinary skill in the art.

For claim 88, not disclosed is that the duplicator is mounted in a vehicle. Taking into account that the disclosure of Griner discusses the fact that the invention is used for musical events or concerts and other such events, it would have been obvious to one of ordinary skill in the art to make the system of Griner portable so that it can be taken to different events in different locations. The examiner takes official notice of the fact that it is very well known in the art of event recording to have a mobile trailer or integrated vehicle/trailer that houses the recording hardware and electronics that are used to record or transmit a live event. This happens with major TV networks have trucks that travel from one event to another, such as the PGA golf events that are held in new locations as the season progresses. It is also very well known that TV stations send mobile trucks to events such as the Super Bowl that house all the electronics and recording/transmission equipment. When one of ordinary skill in the art is making the system of Griner portable, due to the size and amount of equipment involved, it would have been obvious to consider housing the equipment in a vehicle of some kinds, as is done with major TV networks. This would have been obvious to one of ordinary skill in the art.

For claim 94, not specifically disclosed is the MP3 format. The MP3 format is very well known to one of ordinary skill in the art and is a type of file format that one of ordinary skill in the art would have recognized as being usable with the invention of Griner. Claiming the format is MP3, which is so widely well known and is an industry

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standard, is obvious to one of ordinary skill in the art. The language of "for downloading...at the venue" is another recitation directed to the intended use of the structural limitation that the format is MP3. This does not define any further structure to what has been claimed other than the MP3 format.

For claim 97, not disclosed is that the files are encrypted. Encryption of files is very well known and one of ordinary skill in the art could decide to encrypt files if they wanted to. This is well known and would have been obvious to one of ordinary skill in the art.

7. Applicant's arguments filed 12/10/08 have been fully considered but they are not persuasive.

For claim 72, applicant argues that each segment file is recited as including a song and applicant argues that Griner does not disclose this feature. The examiner disagrees. Column 9, lines 17-30 discloses that the segment file can contain a song as far as the examiner can tell. Also, the files themselves are not a structural part of the invention, they are just files composed of data. Whether that data in a segment file is a part of a song or an entire song is not relevant to what is claimed because there are no files in the scope of the claim as this is an apparatus type of claim. Griner creates segment files which satisfies what is claimed. Applicant is relying upon non-functional descriptive material that describes the content of segment files, which is not persuasive. The non-functional descriptive material being the fact that the file is a song. The argument is not persuasive. Structurally Griner discloses what is claimed.

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With respect to the backup recorder and the argument that Griner does not disclose that the processed signal is stored by the backup recorder, this entire argument and this part of the claim is directed to the kind of data that the backup recorder is able to store. Reciting the kind of data that the backup recorder can store defines nothing further to the backup recorder as far as structure goes. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case the backup recorder of Griner can store whatever you want to store on it, including the data claimed. Also, as stated in the rejection, Griner discloses this feature anyway. A backup copy can be made of the primary event file as well as the secondary event files (segment files). In step 506 the recorder receives signals from processor, where the signals are processed signals. This satisfies what is claimed.

With respect to claim 89, the rejection of record addresses the newly amended claim language. Griner has the ability that is claimed as far as being able to download.

With respect to claims 93,95, the rejection of record addresses the newly amended claim language to which applicant is referred and the argument is considered moot.

For claim 96, there is no information in the scope of the claim so arguing that the information of a password, etc. is not in Griner is not persuasive. Claim 95 recites the ability to provide information. There are not steps occurring in apparatus claims and no

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information is being provided because you cannot have method steps in apparatus claims, so reciting what the information is that can be provided is arguing non-functional descriptive material. This is not persuasive. Applicant is arguing the claims like they are method claims, which they are not.

For claim 98, in a similar sense to the argument for the backup recorder, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, a master recorder is in Griner. This satisfies what is claimed.

8. This is an RCE of applicant's earlier Application No. 10/788,867. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689

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